

ORDER BELOW EXH.3 IN SUMMARY SUIT
N0.939/ 2018.

Mr. P. N. Shah, learned advocate for the plaintiff.

CORAM : Y. A. BHAVSAR : CHIEF JUDGE:

1 *Read the plaint, perused the record and heard the learned advocate of the plaintiff.*

2 *This present Summary Suit under Order 37 of the Civil Procedure Code has been filed by the plaintiff against the defendant for recovery of amount of Rs.55,000/- and in this suit, summons for appearance has been duly served to the defendant on dated 08.08.2018 but the defendant has not appeared or filed any appearance within ten days as provided under Order 37 Rule 3(1) of the Civil Procedure Code. Therefore, under Order 37 Rule 2(3) of the Civil Procedure Code, plaintiff is entitled to get decree against the defendant. Therefore plaintiff has filed application vide exhibit – 11 with affidavit for getting exparte decree against the defendant.*

3 *On perusal of the averment of the plaint, it seems that the plaintiff has filed the present suit for recovery of*

: 2 :

amount of Rs.55,000/- wherein Rs.43,585/- is outstanding principal amount and Rs.11,415/- is the amount of interest from the date of 01.04.2015 till filing of the present suit. Thus, plaintiff has claimed total amount of Rs.55,000/- against the defendant but there is no any written or oral contract between the parties for payment of interest at any rate on outstanding amount. Therefore, during the argument learned advocate of the plaintiff argued that he waived the claim for interest as Rs.11,415/- and if court passes decree of the amount of Rs.43,585/- which is outstanding principal amount then he has no any objection written purshis vide exhibit – 13 has been also filed by the learned advocate for the plaintiff. Therefore, considering the averments of the plaint and record and arguments of the learned advocate of the plaintiff and also considering the provision of section 34 of the Civil Procedure Code, plaintiff's suit is required to be allowed partly. Therefore, I pass order as under.

O R D E R

- 1 Plaintiff's suit is partly allowed.*
- 2 Decree of Rs.43,585/- (Rupees Forty Three Thousand Five Hundred Eighty Five Only) is passed against the*

: 3 :

*defendant with interest at the rate of 6% per annum
from the date of filing of the suit till realization with
cost of the suit.*

3 *Decree to be drawn accordingly.*

***Date :11.01.2019.
Ahmedabad.***

**(Y. A. BHAVSAR)
CHIEF JUDGE, CODE GJ00354
SMALL CAUSES COURT
AHMEDABAD.**